

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>V.</b>	)	<b>CR. No.: 3:06cr276-MHT</b>
	)	
<b>JORGE ALBERTO GUTIERREZ-PEREZ</b>	)	

**DEFENDANT’S MOTION TO CONTINUE SENTENCING**

**COMES NOW** the Defendant, **JORGE ALBERTO GUTIERREZ-PEREZ**, by and through undersigned counsel, Kevin L. Butler, and respectfully requests that his sentencing presently scheduled for March 28, 2007, be continued to April 19, 2007. In support of this request, Mr. Guitierrez-Perez would show:

1. On or about September 4, 2006, Mr. Guitierrez-Perez was arrested by Alabama State law enforcement. Mr. Guitierrez-Perez was brought to this Court by way of Writ of Habeas Corpus for these proceedings. However, primary custody of Mr. Guitierrez-Perez remains with the State of Alabama. Consequently, though in U.S. Marshal’s custody, Mr. Guitierrez-Perez has only served “State Time” (i.e. approximately 7 months).
2. At this time, undersigned counsel has been unsuccessfully able to persuade State officials to release Mr. Guitierrez-Perez into Federal Custody.
3. On January 23, 2007, pursuant to a negotiated plea agreement, Mr. Gutierrez-Perez entered a plea of guilty to the single count charged in the Indictment. Pursuant to that plea agreement, the parties agreed to a sentence of 6 months or time served, whichever was less a the time of sentencing. (See Docket #17).

4. Pursuant to the agreement, it was the parties intention to conclude Mr. Guitierrez-Perez' incarceration at the time of sentencing in this case and then have him transferred into immigration authority's custody.
5. As of the filing of this pleading, the State of Alabama has not agreed to release Mr. Guitierrez-Perez into Federal Custody. As a result, if sentenced presently, the Court could not impose a sentence of time served, as no "Federal Time" has been served. In fact, under the plea agreement, Mr. Guitierrez would receive (at a minimum) a sentence of 7 months (i.e. state time served) + 6 months (i.e. federal sentence).
6. It is therefore in the interest of justice to allow undersigned counsel a further opportunity to persuade state prosecuting and law enforcement officials to release Mr. Guitierrez-Perez into Federal Custody. In the alternative, it will allow the parties the opportunity to possibly fashion an alternative sentencing option.
7. This would allow the Court the opportunity to impose a sentence in conformity with the plea agreement.

Dated this 27<sup>th</sup> day of March 2007.

Respectfully submitted,

s/ Kevin L. Butler  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Chris Snyder, Esquire  
Assistant United States Attorney  
One Court Square, Suite 201  
Montgomery, Alabama 36104

Respectfully submitted,

s/ Kevin L. Butler  
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